February 2, 2017

Via ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of Ex Parte Presentation – CAF Phase II Competitive Bidding (WC Docket No. 10-90)*

Dear Ms. Dortch:

This letter is in response to the January 19, 2017 filing by a coalition of rural electric utilities and incumbent local exchange carriers ("ILECs") submitting a weighting proposal for the Connect America Fund ("CAF") Phase II competitive bidding process in the above-referenced docket ("Fiber Proposal").[1] As discussed in more detail below, although the Fiber Proposal purports to be a "good-faith effort to build consensus,"[2] it is in fact an effort to advantage fiber-based providers in the auction. Moreover, it would skew the auction results in favor of very expensive fiber-based broadband solutions, resulting in service to fewer locations. Instead, the Commission should adopt a more competitively neutral option such as Hughes's proposal.

The Fiber Proposal Gives Excessive Weight to Ultra-High-Speed Bids. As the current members of the Commission have pointed out, the goal in the CAF Phase II auction is "to maximize the broadband bang we get for our universal service buck by establishing a flexible weighting system that should incentivize carriers to deploy faster service to rural America at the lowest possible price to the taxpayer."[3] The weighting system should not "put a thumb on the scale to fund a handful of fiber projects in lower-cost areas," because "if the weighting skews the results such that a few communities receive Gigabit service, but many more have no access at all, then the auction will have failed to deliver on the promise of universal service."[4] Instead, the Commission should adopt "technology neutral speed, capacity and latency tiers for the auction … structured in a way to encourage all providers – … terrestrial or satellite – to participate."[5] Consistent with these values, the Commission recently imposed conditions on New York's distribution of CAF support through its state broadband program to ensure that the distribution of support is "consistent with the objectives of the Connect

[1] Letter from Rebekah Goodheart, Jenner & Block, on behalf of the Association of Missouri Electric Cooperatives, Midwest Energy Cooperative, HomeWorks Tri-County Electric Cooperative, Alger Delta Cooperative Electric Association, Great Lakes Energy, the National Rural Electric Cooperative Association ("NRECA"), the Utilities Technology Council ("UTC"), and NTCA – The Rural Broadband Association, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Jan. 19, 2017) ("Fiber Proposal").

[2] *Id.* at 3.

[3] *Connect America Fund, et al.,* Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6109 (2016) (Statement of Comr. Ajit Pai) ("*CAF Phase II Auction Order*").

[4] *Id* at 6111-12 (Statement of Comr. Michael O'Rielly).

[5] *Id.* at 6106 (Statement of Comr. Mignon Clyburn).

America Fund" by allocating support in a way "that is technology-neutral and that balances the objectives of maximizing the number of consumers that will be served with the value of higher speeds, higher usage allowances, and lower latency."[6] To this end, the Commission provided that the state may "not give an absolute preference to any type of technology or speed" nor "place any restrictions on the technologies that can be used to meet the relevant service obligations."[7]

The Fiber Proposal would prevent the Commission from maximizing the broadband bang it gets from its universal service buck by placing a thumb on the scale in favor of Gigabit projects, necessarily constructed using the highest-cost broadband technology, fiber, at the expense of lower-cost competitive alternatives such as satellite. This approach would "divert[] a significant portion of the budget to fund one type of technology or speed when more cost-effective, reasonably comparable options may be available."[8]

Specifically, the Fiber Proposal would provide a bidding credit of 60% of the reserve price off of bids in the Gigabit tier.[9] This excessive premium for ultra-high-speed proposals is inconsistent with the Commission's goals for the program, as discussed above. It also is out of sync with the record in the proceeding. The majority of commenters recognized that, as USTelecom stated, the "weighting methodology must not overpower the need to keep price and efficiency as the primary driver of auction results."[10] Consistent with Hughes's proposal, Verizon observed that "the Commission should not set a large weight for any performance tier" because a "large weight would permit a substantially higher bid to win over a lower bid, and thus deplete the available budget more rapidly."[11] In fact, most commenters proposed weighting frameworks similar to Hughes's, assigning weights of at most 5-10 percentage points per tier, resulting in maximum weighting for the Gigabit tier in the 25-30% range.[12] The Commission should adopt weighting values in this range, consistent with the bulk of the comments.

The Fiber Proposal Overly Penalizes Satellite Services' Latency. The Fiber Proposal also proposes a penalty for bids in the higher latency tier of 25% of the reserve price, which is an excessive penalty for an issue that is not that important in serving consumers in very rural and remote areas. First, this punitive weighting penalty ignores the Commission's ruling that bidders in the higher latency category still will be required to achieve a Mean Opinion Score ("MOS") of 4 or better, demonstrating good quality voice services. Moreover, as ViaSat has demonstrated, speed has a greater impact on consumers' perception of broadband quality than latency.[13] Thus, there is no basis to impose a greater factor for higher latency than for an increment in speed/capacity tier. Consistent with Hughes's

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[6] *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90 and 14-58, Order, FCC 17-2 (rel Jan. 26, 2017) at ¶ 42.
[7] *Id.*
[8] *Id.* at ¶ 43.
[9] Fiber Proposal at 3.

[10] USTelecom comments at 2-3. References herein to parties' "comments" refer to initial comments in response to the FNPRM filed on or about July 21, 2016.

[11] Verizon comments at 4. As used herein, "comments" refer to parties comments in response to the CAF Phase II further notice on bid weighting, filed on or about August 5, 2016.

[12] *See, e.g.,* Hughes comments at 2-5; ITTA comments at 8-10; USTelecom comments at 3; Verizon comments at 4; Rural Wireless Association comments at 3. *See also* ViaSat comments at 3-4 (pointing out the inefficiency of weighting bids at higher performance levels).

[13] ViaSat comments at 5-6.

comments, latency should account for no more than a 10 percent weighting factor.

The Fiber Proposal Exacerbates These Flaws by Calculating Bid Weights Based on the Reserve Price Rather Than the Bid Amount. The Fiber Proposal exacerbates the excessively large credits it provides to ultra-high-speed bids and the excessively large penalty it imposes on higher-latency bids by calculating the credits and penalties as a percentage of the reserve price rather than the bid itself. Calculating the bidding credits as a percentage of the reserve price amplifies their effect, and thus exacerbates the impact of the excessively favorable weighting for ultra-high speeds and excessively unfavorable weighting for higher latency.

In the example on page 3 of the Fiber Proposal, a $65 bid in an area with a $100 reserve price in the 100 Mbps tier gets a $15 credit – 15% of the $100 reserve price – even though 15% of the $65 bid amount would only be $9.75. There is no justification for this amplification of the weighting values.

The cumulative effect of the Fiber Proposal's excessive credit for the Gigabit tier and the excessive penalty for higher latency means that a fiber (low-latency) bid in the Gigabit tier would have a **total weighting advantage of 85% of the reserve price** as compared to a satellite (higher-latency) bid in the 25/3 tier.

To put this in concrete terms, consider a hypothetical eligible census tract with a reserve price of $100 per location and 100 locations in the eligible area. Suppose a satellite provider bid to provide 25/3 service to these 100 locations at $25 per location, at a total cost to the fund of $2,500. Suppose a fiber provider bid to provide Gigabit service to these locations at $100 per location, at a total cost to the fund of $10,000. Under the Fiber Proposal, the fiber-based bid would receive a bidding credit of 60% of the reserve price (which is also the fiber provider's bid amount in this example), resulting in the fiber provider's bid being considered at $40 per location. Under the Fiber Proposal, the satellite bid of $25 would receive no weighting for the 25/3 tier and be subject to a penalty of 25% of the reserve price (even though it bid a small fraction of the reserve price) for higher latency, resulting in a weighted bid of $50. Thus, under the Fiber Proposal, the fiber bid would win, even though it would cost the Fund four times as much in actual dollars of support.

By contrast, Hughes's more moderate weighting proposal would give the fiber bid a credit of 30% of the bid amount for the Gigabit tier, and a credit of 10% of the bid amount for lower latency, so that the fiber bid would be considered in the auction at $60. The satellite proposal would receive a credit of 10% of the actual bid for the 25/3 tier, and no weighting for higher latency, so that it would be considered at $22.50. This would lead to an economically efficient outcome: Where a satellite provider can provide high-quality (25/3) service at a substantially lower cost, the satellite provider would win.

The outcomes under the Fiber Proposal and Hughes's proposal are shown graphically in this table:

Hypothetical Eligible Bidding Area $100 Reserve Price 100 Eligible Locations					
	Service Tier	**Actual Bid**	**Per Fiber Proposal**	**Per Hughes Proposal**	**Total Cost to Fund**
Satellite Bid	25/3	$25	$50[14]	**(winner) $22.50**[15]	$2,500
Fiber Bid	Gigabit	$100	**(winner) $40**[16]	$60[17]	$10,000

This outcome also is not an artifact of this particular bidding example. In an eligible area with a $100 reserve price, under the Fiber Proposal, a satellite bid at 25/3 would only *equal* a fiber bid in the Gigabit tier if the satellite bid was at least $85 below the fiber bid.[18] This means, for example, that, under the Fiber Proposal in an area with a $100 reserve price, a fiber bid in the Gigabit tier at $84 or less would *beat any bid* by a satellite provider in the 25/3 tier.

As this example shows, the Fiber Proposal would give an insurmountable advantage to fiber bids that that cannot be justified in light of the Commission's universal service goals. Thus, the Commission must reject the Fiber Proposal. Instead, the Commission should establish more reasonable weighting percentages which should be applied to the actual bid amounts rather than the reserve prices, such as Hughes's proposal.

Sincerely,

/s/ Jennifer A. Manner
Jennifer A. Manner
Senior Vice President, Regulatory Affairs

cc: Nicholas Degani
Jay Schwartz
Claude Aiken
Amy Bender
Kris Monteith
Ryan Palmer
Alexander Minard
Katie King

[14] Zero weighting for 25/3 tier; 25% of $100 reserve price penalty for high latency.

[15] Weighting of 10% of actual bid for 25/3 tier; zero weighting for high latency.

[16] Weighting of 60% of reserve price for Gigabit tier; zero weighting for low latency.

[17] Weighting of 30% of bid for Gigabit tier and 10% of bid for low latency.

[18] By contrast, under Hughes's proposal, a fiber bid in the Gigabit tier would *equal* a satellite proposal at 25/3 if the fiber proposal were one and a half times (1.5x) the satellite proposal. This shows that Hughes's proposal still gives substantial weight to higher-speed, lower-latency bids.